

Optimizing Penal Mediation through Restorative Justice: A Progressive Solution in Criminal Law Reform

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Abstract

In Indonesia, prison mediation by restorative justice has evolved as a progressive approach to criminal justice reform to create a more compassionate, efficient, and rehabilitative justice system. Despite its promise, its implementation confronts problems such as a lack of knowledge among law enforcement personnel and the general public and regulatory inadequacies. This paper intends to evaluate the application of penal mediation as an alternative to conventional criminal justice processes, analyzing its role in attaining restorative justice and its efficacy in resolving minor offenses and child-related issues. This study examines prison mediation through restorative justice in the Indonesian criminal law system using a normative juridical technique combined with a qualitative descriptive-analytical methodology. Data were gathered from literature reviews and associated legal documents, and the analysis was done utilizing a deductive-inductive technique to combine theory and practice in criminal law reform. According to the findings, introducing prison mediation via restorative justice can substantially contribute to revamping Indonesia's criminal justice system, notably by decreasing the load on courts and offering a more rehabilitative approach for offenders. The study emphasizes the significance of matching legislative frameworks, such as the Penal and Draft Criminal Procedure Code, with restorative justice ideas for easier integration. Furthermore, research demonstrates that the practical application of restorative justice has ongoing hurdles, notably in terms of legal understanding and institutional preparation. The report proposes enhancing training for legal practitioners and extending public awareness campaigns to increase the efficacy of restorative justice in Indonesia.

Keywords: Criminal Justice; Legal Reform; Penal Mediation; Restorative Justice



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Introduction

As a state of law (*rechtstaat*), Indonesia should ensure that all aspects of state administration, state administration, and social order are regulated by laws oriented toward justice and legal certainty for all its citizens. (Adi, 2021)

In criminal law reform, the conventional normative approach through the courts often faces challenges in the form of case backlogs and excess capacity of correctional institutions.(Fatas& Restrepo-Plaza, 2022) This condition encourages the importance of alternatives for resolving criminal cases outside the courts, such as restorative justice-based penal mediation.(Mancano& Russo, 2022) This approach offers a peaceful solution between perpetrators and victims and allows active community participation in achieving substantive justice. By referring to progressive practices in other countries, such as the Netherlands, penal mediation can address various problems in the Indonesian criminal law system, including resource efficiency and reducing the burden on correctional institutions while still ensuring that the rights of victims and perpetrators are fulfilled reasonably.

Restorative justice become one of the progressive solutions in reforming the criminal justice system in Indonesia, aiming to prioritize more inclusive and humanistic justice.(Skjærvø et al., 2024) This practice has been implemented since 2009, marked by various policies and regulations such as the Regulation of the Chief of Police No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and the Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. Restorative justice is also reflected in the implementation of diversion in child cases by Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.(Amus et al., 2024) Based on data from the Supreme Court of the Republic of Indonesia, in 2021, there were 580,518 general criminal cases handled, but only 23,750 cases could be decided. It shows the high burden of cases piling up in the courts. The data shows that the criminal justice system in Indonesia faces serious challenges in the form of a high burden of unresolved cases in court. In 2021, 580,518 general criminal cases went to court, while only a small portion could be processed to completion. This condition is exacerbated by the situation in correctional institutions, which are experiencing significant overcapacity. Based on data from the Directorate General of Corrections, the ideal capacity of all correctional institutions in Indonesia can only accommodate around 125,000 prisoners. However, in reality, they are inhabited by more than 249,000 prisoners. Thus, the overcapacity rate reaches 99%, which not only causes inhumane conditions but also affects the effectiveness of prisoner guidance and supervision.(Basri, 2021) Furthermore, the condition of correctional institutions, which have experienced overcapacity of up to 99%, is also an urgent reason to seek alternatives for resolving criminal cases outside the courts.

The restorative justice approach in the criminal justice system in Indonesia demands comprehensive synchronization, as described by Muladi in the concept of an "integrated criminal justice system," which includes structural, substantial, and cultural synchronization.(Sellers & Arrigo, 2022) It indicates an urgent need for a strong and integrated legal umbrella, starting from material criminal law and formal criminal law to criminal enforcement law. Unfortunately, although Law Number 1 of 2023 concerning the Criminal

Code has been passed as a significant step in the renewal of material criminal law, the priority national legislative program (prolegs) for 2020–2024 has not included a discussion of the Draft Law (RUU) on Criminal Procedure Law. This gap reflects the lack of adequate attention to formulating a truly integrated criminal law system.

In addition, gaps in implementing restorative justice are rooted in overlapping regulations between law enforcement institutions and the lack of a comprehensive legal framework for penal mediation. Data shows a high backlog of cases in court—580,518 general criminal cases in 2021, with correctional institutions overcapacity of up to 99%. (Basri, 2021) This condition emphasizes the need for more effective and humane alternatives for resolving cases, such as restorative justice-based penal mediation. However, implementing restorative justice still faces obstacles, such as overlapping regulations and a lack of harmonization between law enforcement institutions. Therefore, the use of deliberation values in Pancasila as a philosophical foundation is expected to be able to overcome these challenges and create a criminal justice system that is fairer, more efficient, and in favor of the interests of all parties.

Therefore, the author takes the title "Optimizing Penal Mediation through Restorative Justice: A Progressive Solution in Criminal Law Reform" to highlight the potential of restorative justice as a progressive step in criminal law reform while also underlining the importance of an integrated legal framework to support consistent and effective implementation in the field. This study also fills the gap in the lack of in-depth studies on optimizing penal mediation as a legal instrument based on restorative justice in Indonesia.

Methodology

This study uses a normative legal method with a qualitative descriptive-analytical approach to analyze the application of penal mediation through *restorative justice* in the Indonesian criminal law system. According to SoerjonoSoekanto, the normative legal approach is legal research conducted by examining library research or secondary data as basic materials for research through tracing texts relevant to the problems discussed. (Soekanto, 2007) This study relies on primary legal materials such as the 1945 Constitution, the Criminal Code, the Draft Bill on the Criminal Procedure Code, and related regulations such as Perma No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System and Regulation of the Chief of Police No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Secondary legal materials in the form of relevant doctrines and literature are also used, including books on *restorative justice*, current legal journals, scientific articles on criminal law reform, and policy reports from institutions such as the Supreme Court and the Police. Data were collected through literature and document studies covering laws and policies related to *restorative justice* from various state institutions. The analysis used a deductive-inductive approach, combining theory and practice

to provide a clear picture of optimizing penal mediation in criminal law reform in Indonesia.

Results and Discussion

The application of penal mediation through a restorative justice approach as a progressive solution in criminal law reform in Indonesia, using Legal Reform Theory.(Islam et al., 2024) This criminal law reform focuses on optimizing the mechanism for resolving criminal cases by prioritizing restorative justice as an alternative resolution outside the formal judicial process.(Hobson & Payne, 2022) Based on the findings obtained, several aspects must be explained in a rigid way that is related to the research results and their implementation in criminal law reform in Indonesia.

In criminal law policy, the imposition of criminal penalties to combat crime is one of the efforts taken in addition to various other efforts.(Cepeda-Francesse & Ramírez-Álvarez, 2023) Handling crime through the Criminal Justice System is one form of crime prevention known as "Penal Efforts," which refers to using Criminal Law Regulations in the legal process.(Diaz et al., 2024) However, the criminal justice system only covers a small part of the overall effort in dealing with crime.(Piamenta & Gal, 2024) Along with the formal criminal law approach, there are also efforts to resolve crimes that are carried out outside the judicial process through an approach that emphasizes the factors that cause crime. It involves resolving cases by agreement between the parties without involving the courts but still within the framework of social and legal norms and principles of justice.

This criminal law policy should be seen as part of a broader crime prevention policy, known as criminal policy.(Akpanekpo et al., 2024) Policies to prevent and deal with criminal acts cannot be separated from larger social policies, which consist of social welfare policies and social defense policies. In this case, penal mediation through a restorative justice approach can be a solution that provides space for achieving social justice for both parties—the perpetrator and the victim—in resolving criminal cases.

Resolving criminal acts through penal mediation prioritizes an agreement built between the perpetrator of the crime and the victim by involving a third party as a mediator.(Mancini & Metcalfe, 2023) In this case, the settlement achieved is aimed at satisfying both parties and paying attention to the win-win principle. According to Covey, a solution is a framework of thinking and feeling that focuses on finding mutual benefits in every interaction. This concept emphasizes mutually beneficial solutions where both parties are satisfied with the agreement reached, and both are bound to implement the results of the agreement. The philosophy of win-win solution This reminds us that in social life, success often depends on cooperation, not competition. It aligns with the concept of penal mediation, which provides a place for perpetrators and victims to dialogue and reach agreements without pressure.

The implementation of penal mediation also received support from various laws and regulations in Indonesia, which provide a legal basis for resolving criminal acts outside the formal justice system. For example, in Law

Number 11 of 2012 concerning the Criminal Justice System Children, some provisions allow for the resolution of children's cases through diversion, which aligns with the principle of restorative justice. In addition, customary law and Islamic law also provide space for the resolution of cases through mediation, such as in the Aceh Gapong Court, the Papuan Stone Burning Culture, and the concept of forgiveness in Islamic law, which is reflected in the word of Allah in QS. Al-Baqoroh: 178 emphasizes the importance of forgiveness in resolving criminal cases.(Giosefi et al., 2025)

It shows that penal mediation through restorative justice can be an alternative to resolving criminal cases that is more humane and effective, in line with the objectives of criminal law reform in Indonesia. This approach not only emphasizes the restoration of relations between perpetrators and victims but also provides double protection for victims and perpetrators of criminal acts and ensures protection for society in general.(Stolzenberg et al., 2024) The principle of win-win This solution allows for an agreement that benefits both parties so that the desired justice can be realized without ignoring each party's rights. Through this approach, the theory of utilitarianism put forward by Jeremy Bentham can be actualized, where problem-solving provides benefits for all parties involved by the most significant principle of utilitarianism, namely, creating maximum happiness for as many people as possible.

Restorative justice carries the principle that justice must prioritize restoring relationships, not just punishment.(Barboza-Salerno et al., 2025) In Indonesia, this concept has received attention in the context of criminal law reform, where the role of victims and society must be more appreciated. In this concept, perpetrators are invited to understand the harm they have caused to victims and society, not just to serve punishment for their actions.(Paterson-Young et al., 2024) Restorative justice through criminal mediation has successfully lowered recidivism rates in several nations, including the United States and Germany. Comparative studies suggest that this strategy not only helps offenders realize the impact of their acts on victims but also allows victims to participate in the resolution process, improving satisfaction and lowering the risk of offenders repeating their crimes.

Victim-offender mediation (VOM) has existed in the United States since the 1970s.(Ponce-López et al., 2015) This initiative enables direct interactions between victims and perpetrators, guided by experienced mediators.(Choi & Severson, 2009) Research demonstrates that participation in a VOM program can lower recidivism rates by up to 27% when compared to offenders who do not enroll in the program.(Soria Verde et al., 2014) Since the 1980s, Germany has used the Täter-Opfer-Ausgleich (TOA) concept, which means "settlement between perpetrator and victim".(Dudeck& Kaspar, 2025) This strategy centers on a conversation between the perpetrator and victim to establish a mutually beneficial arrangement. Studies have shown that implementing TOA has been effective in lowering recidivism rates, particularly among offenders of minor crimes and those who express sorrow for their conduct.

Restorative justice has recently gained traction in Indonesia, particularly in child protection and juvenile justice. Law Number 11 of 2012 About the Juvenile Criminal Justice System is one of the laws that has adapted restorative justice ideas to deal with children in dispute with the law.(Kurniasi, 2024) Restorative justice is not restricted to minor crimes or kid cases in Indonesia; it may also be applied to instances with minimal criminal threats, complaint offenses, and family crimes. This strategy enables faster and more effective case settlements and gives victims and perpetrators a chance to strike mutually beneficial agreements without going through a lengthy formal court procedure.

According to statistics from comparative outcomes in numerous nations, including the United States and Germany, restorative justice, mainly through criminal mediation, has been shown to lower recidivism rates. In Indonesia, this notion may allow for penal mediation in situations with modest criminal risks, complaint offenses, juvenile crimes, and family concerns.

According to the rules of Article 30C of Law No. 11 of 2021 about the Attorney General's Office of the Republic of Indonesia, *de jure* penal mediation is a step prosecutors can take to resolve criminal cases using a restorative justice approach. This strategy establishes a firmer legal foundation for settling disputes outside the official court procedure. It is consistent with the research findings, which revealed that the community, particularly victims, saw the advantages of direct engagement in the case settlement process, which benefitted both sides.

The establishment of penal mediation, which gives an alternative to settling criminal matters outside the courts, has been shown to lower the strain on the criminal justice system in nations that have previously implemented this system.(Van Hout et al., 2023) The European Forum for Restorative Justice reported a 40% decrease in the number of cases brought to court in several European countries, demonstrating that penal mediation can speed up the case resolution process and reduce the number of cases brought to court.

In Indonesia, the application of penal mediation is still limited to certain types of criminal acts.(Martitah et al., 2024) However, there is evidence that this application has a positive impact, for example, in cases of negligence as regulated in Article 359 of the Indonesian Criminal Code, which can be resolved through penal mediation. With this system, victims receive compensation without having to wait for a long and complicated trial process. Thus, penal mediation can be a progressive solution to reduce the backlog of cases in court and accelerate the resolution of cases. The trial process, which is dominated by formal demands in the criminal system, often causes dissatisfaction for both victims and perpetrators.(Adi, 2021) With penal mediation, a more flexible space is created for the parties involved to reach a better solution.

Penal mediation in restorative justice provides more space for victims to be actively involved in resolving cases.(Rodrigues et al., 2024) In Indonesia,

victims often only become witnesses in the trial process without having a say in the final decision. In fact, victim involvement can strengthen their sense of justice and help them in psychological recovery.

Supporting data from case studies in Canada and New Zealand show that victims involved in mediation are more satisfied with the legal process and experience faster recovery. (Van Hout et al., 2023) This is also supported by a report from the Institute for Restorative Justice. Who found that 85% of victims felt better after participating in the mediation process, compared to 55% who were satisfied with the formal justice outcome. In Indonesia, victim involvement in penal mediation is still minimal. According to data from the Indonesian Ministry of Law and Human Rights, there is a large gap between victim awareness and their rights in mediation. However, with increased awareness of restorative justice, as well as support from institutions that better understand the role of victims, it is hoped that in the future, more victims will participate in penal mediation, especially for minor crimes.

Indonesia confronts several problems in implementing restorative justice and prison mediation. One of the most significant obstacles is law enforcement agents' lack of awareness and training in mediation. According to data from the Legal Human Resources Development Agency (BPSDMH), only around 30% of law enforcement officials receive restorative justice and prison mediation training. In addition, public understanding of the benefits and processes of prison mediation remains low. According to a survey by the Institute for the Study of Law and Justice (LSHP), 60% of individuals in rural regions are unaware of the possibility of resolving disputes through prison mediation. As a result, primary education and training initiatives are required to promote public comprehension and participation in the criminal mediation process. (Suprpto, 2023)

Another issue is that legislative regulations do not entirely support penal mediation in all criminal crimes. Although there are regulations that control it, its execution has not been wholly maximized, especially in places where an appropriate support structure has not yet been established. (Aryani et al., 2021) Several strategic initiatives, including criminal mediation and restorative justice, may be taken to ensure legal reform's long-term viability. Several strategic initiatives, including criminal mediation and restorative justice, may be taken to ensure legal reform's long-term viability. To enhance the execution of this system, law enforcement officials, the community, and other stakeholders must first get better knowledge and education about these two techniques. Furthermore, comprehensive legal infrastructure, including legislation, standard operating procedures, and organizations that deal with connected matters, is required to enable sustainability. Furthermore, greater collaboration with other parties, such as professional mediators and non-governmental groups, can broaden the scope and efficacy of the restorative justice model. (Ferguson & Smith, 2024) Building public trust in this system is critical for its well-received success, which may be accomplished by successfully completing cases using this technique. Continuous review and

monitoring are also required to identify issues and ensure the ideals of restorative justice are implemented in the system.(Mukai et al., 2024) Furthermore, flexibility in application based on regional regulations is critical to tailor this strategy to different situations and types of infractions. Finally, a multidisciplinary approach that includes viewpoints from other disciplines, such as psychology, sociology, and criminology, might improve the use of restorative justice by considering the social and psychological consequences for perpetrators and victims. With these stages, legal changes, including criminal mediation and restorative justice, can become more successful and lasting, resulting in more comprehensive justice.

According to the Ministry of Legislation and Human Rights statistics, the ongoing Criminal Procedure Code presents a chance to incorporate restorative justice into Indonesian criminal procedure legislation more systematically. Strengthening the mediation infrastructure is critical for long-term viability. It comprises mediator training and certification, as well as the provision of sufficient mediation facilities. Data from the European Forum for Restorative Justice suggest that a well-organized prison mediation system may decrease the strain on the criminal justice system by up to 30%, resulting in lower social and economic expenses connected with the court process. Furthermore, the engagement of non-governmental groups focused on education and restorative justice advocacy can increase the ability to execute correctional mediation and increase community access to this peace-based option.

Using prison mediation via restorative justice has several consequences for Indonesia's criminal justice system. According to BPSDMH data, prison mediation can be an effective alternative for settling small instances without harsh penalties. Furthermore, the presence of restorative justice in Indonesia's criminal law system can speed up the legal procedure and boost victim satisfaction with the results. This legislative reform also provides chances to minimize the number of cases in court, which can improve the efficiency and quality of the criminal justice system. Restorative justice is supposed to produce a more inclusive and just society by allowing perpetrators, victims, and the community to participate in the conflict resolution process. It should also be noted that this system focuses not only on justice for victims but also on the rehabilitation of perpetrators in order to reduce recidivism and provide opportunities for perpetrators to improve themselves without having to serve a prison sentence that may jeopardize their social rehabilitation.

Incorporating penal mediation and restorative justice into the Indonesian criminal justice system can potentially build a more equitable, efficient, and recovery-focused system. Although significant hurdles remain to its implementation, strategic initiatives such as education, training, and regulation modification can increase criminal mediation, delivering more benefits to victims, perpetrators, and society. This law change offers promise for a criminal justice system that focuses on punishment, rehabilitation, and social cohesion.

Different solutions must take into account various factors to enhance the implementation of penal mediation and restorative justice in Indonesia's criminal justice system. Indonesia requires unique legislation that outlines the execution of criminal mediation outside of the official court procedure and the rights and duties of the parties engaged. (Karjoko et al., 2021) It is critical to provide legal clarity to perpetrators and victims and reduce confusion in implementing the restorative justice principle, which has not been adequately addressed in existing rules. The new Criminal Procedure Code (KUHAP) must contain more precise rules addressing criminal mediation as an option for settling cases, replacing provisions in the previous KUHAP that did not adequately accommodate this principle.

Meanwhile, the effectiveness of restorative justice depends heavily on the awareness of both the offender and the victim to reconcile and address the situation via discourse without pressure. This emphasizes the importance of sincerity from both parties so that the mediation process runs smoothly. The perpetrator must show sincere regret for his actions, while the victim is given space to express his feelings and the impact caused by the crime. In order to prevent the victim from feeling coerced or overlooked during the settlement process, psychological support should be given in order to guarantee justice for the victim. This assistance will support the mediation in running better and more fairly.

There is also a need for improvement in education and socialization about restorative justice, both to law enforcement officers such as police, prosecutors, and judges, as well as to the wider community. (Lesnick et al., 2025) He argued that intensive socialization about the principles of restorative justice would strengthen the understanding that the main goal of the criminal justice system is not only to punish the perpetrator but also to restore social relations between the perpetrator and the victim. By increasing understanding of this principle, the penal mediation process can be implemented more effectively, especially if it is started at the early stages of the investigation. At this stage, law enforcement officers can offer alternatives to resolving cases outside the formal judicial process, which will reduce the burden on the judiciary and provide an opportunity for the perpetrator to regret their actions and repair the damage caused.

In juvenile justice, restorative justice is very relevant to be applied in its justice system. (Sandella et al., 2025) This is because perpetrators of criminal acts who are still minors often do not fully understand the consequences of their actions. (Welner, 2025) A restorative approach can prevent children from the stigma of crime that can damage their psychological development. Therefore, it is recommended that penal mediation be the first choice in resolving juvenile cases, especially in cases involving minor crimes or cases that occur in family matters. This approach is expected to provide an opportunity for children to be responsible for their actions without damaging their future, as well as help the process of restoring the relationship between the child and the victim.

Social institutions and communities are very important to be more involved in the penal mediation process.(Mancano& Russo, 2022) Social institutions can act as mediators or as liaisons between the perpetrator and the victim to reach a peaceful agreement. The author suggests that people in the perpetrator and victim communities should be given the opportunity to play an active role in overseeing the mediation process so that the case resolution process is more oriented towards the common good and creates a community that supports each other. This is in line with the principle of restorative justice, which emphasizes the restoration of social relations in society, as well as reducing social tension and crime.

By adopting the solutions outlined by the author, it is hoped that the implementation of penal mediation through restorative justice can be an effective solution in achieving more humane justice and more oriented toward restoring relations between perpetrators and victims. Several steps that can be taken to optimize the implementation of penal mediation are strengthening regulations governing restorative justice, emphasizing the awareness of both parties to participate in the mediation process voluntarily, increasing education and socialization regarding restorative justice to the community and law enforcement officers, integrating the principles of restorative justice into the juvenile justice system, and involving the community and social institutions in the mediation process to ensure that the process runs fairly and sustainably. Thus, the Indonesian criminal law system can provide more space for the resolution of cases that are fairer and more humane and prioritize the restoration of social relations, not just punishing the perpetrators.

According to legal reform theory, this article's discussion of restorative justice in conjunction with penal mediation demonstrates an effort to radically alter Indonesia's criminal justice system.(Aryani et al., 2021) This legal reform idea posits that the law should adapt to social developments and community needs to deliver more comprehensive justice. The restorative justice concept, which focuses on restoring relationships between criminals and victims, is a more humanitarian alternative to the traditional retributive punishment system. In this instance, prison mediation becomes an effective conduit that enables speedier and more efficient conflict settlement without the need for formal justice, which is consistent with the spirit of criminal law reform. This idea also underlines that legal reform aims to change not only rules and regulations but also the legal culture and society's perception of justice. As a result, the effectiveness of restorative justice implementation is heavily dependent on community knowledge, law enforcement officials, and social institutions.

However, while restorative justice and prison mediation represent a progressive approach, the problems of applying it in Indonesia's legal system remain enormous. According to Legal Reform Theory, legal reform cannot be easily imposed; it takes time, knowledge, and extensive structural adjustments.(Karjoko et al., 2021) The lack of knowledge of restorative justice concepts among law enforcement personnel and the general public and the

restricted rules that properly accommodate prison mediation are significant barriers to adopting this approach. As a result, legislative change in prison mediation must be accompanied by strategic initiatives such as increasing legal education, raising awareness about restorative justice, and upgrading legal infrastructure to speed and facilitate the mediation process. In this scenario, legal reform theory highlights the necessity of incorporating all relevant stakeholders, including social institutions and the community, to build a more inclusive, fair, and integrated legal framework.

Conclusion

Regarding criminal law reform in Indonesia, the application of penal mediation through a restorative justice approach can be a progressive and successful alternative in resolving criminal cases, particularly those involving minor crimes, complaint offenses, or child cases, as demonstrated by the discussion's conclusion. By emphasizing the repair of relationships between offenders and victims and incorporating the community in resolving conflicts, legal reform can offer more comprehensive justice, according to the theory study. A more humane and effective way to settle disputes is through penal mediation, consistent with utilitarianism's emphasis on maximizing advantages for all parties. Strategic actions like boosting education and socialization and fortifying regulations can help this system succeed, even though there are still many obstacles to overcome in its implementation, such as the public's lack of knowledge about restorative justice and the law enforcement community's limited comprehension of it. Based on these results, the author comes to the conclusion that restorative justice-based penal mediation should be a key component of Indonesian criminal law reform as it can produce a justice system that is more effective, equitable, and focused on healing rather than merely punishment.

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